

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Consolidated Water Power Company

Docket Nos. ER98-4512-002
ER98-4512-003
ER98-4512-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND TARIFF
SHEETS

(Issued December 17, 2004)

1. In this order we accept an updated market power analysis filed by Consolidated Water Power Company (Consolidated). We also accept certain revised tariff sheets filed by Consolidated. As discussed below, we conclude that Consolidated satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Consolidated's next updated market power analysis is due three years from the date of this order.

Background

2. On November 21, 2001, Consolidated filed an updated market power analysis pursuant to the Commission's order granting Consolidated authority to sell electric energy and capacity at market-based rates.¹ On August 5, 2004, as amended on October 22, 2004, Consolidated submitted for filing a revised updated market analysis pursuant to the Commission's order issued on May 13, 2004.² The May 13 Order addressed the procedures for implementing the generation market power analysis

¹ *Consolidated Water Power Co.*, 85 FERC ¶ 61,289 (1998).

² *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

announced on April 14, 2004, and clarified on July 8, 2004.³ Consolidated also submitted revised tariff sheets⁴ to its market-based rate tariff to include the Commission's market behavior rules.⁵

3. Consolidated owns five hydroelectric projects in the Wisconsin Public Service Corporation (WPSC) control area with a total generating capacity of approximately 33 MW. Consolidated operates no other generating facilities. Consolidated also owns a 13.8 kV to 46 kV transmission system to serve load and states that it does not provide transmission service in interstate commerce. Consolidated's transmission facilities are operated by the American Transmission Company.

Notice and Responsive Pleadings

4. Notice of Consolidated's November 21, 2001 filing was published in the *Federal Register*, 67 Fed. Reg. 1457 (2002), with protests and interventions due on or before January 17, 2002. None was filed. Notice of Consolidated's August 5, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 51,659 (2004), and its October 22, 2004 filing was published at 69 Fed. Reg. 64,744 (2004), with protests and interventions due on or before November 12, 2004. None was filed.

Discussion

Market-Based Rate Authorization

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁶

6. As discussed below, we conclude that Consolidated satisfies the Commission's standards for market-based rate authority.

³ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁴ FERC Electric Rate Schedule No. 1, Revised Sheet No. 1 and Original Sheet Nos. 2-3.

⁵ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

⁶ *See, e.g., Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

Generation Market Power

7. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the market share screen. The Commission has reviewed Consolidated's generation market power screens for the WPSC control area. When performing the market share screen, Consolidated uses monthly minimum demand as the proxy for WPSC's native load. However, the Commission stated in the April 14 Order that the proxy for native load in the market share screen is the lowest daily peak of each season. Using the monthly minimum demand when examining competing suppliers understates the native load deduction outlined by the April 14 and July 8 Orders. Nevertheless, the Commission has determined that Consolidated passes the market share screen using data listed in WPSC's Form 714.⁷

8. The Commission has determined that Consolidated passes both the pivotal supplier and wholesale market share screens in the WPSC control area. Consolidated passes the market share screen for the WPSC control area with a market share of less than 13.3 percent in each of the four seasons considered. According, we find that Consolidated satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

9. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. Consolidated states that it does not provide electric transmission service in interstate commerce and that it owns only limited and discrete distribution level facilities, which are operated and controlled by other public utilities under an OATT. Further, no intervenors have raised transmission market power concerns. Based on Consolidated's representation, the Commission finds that

⁷ WPSC listed monthly peaks in its Form 714. The lowest monthly peak of each season is greater than or equal to the lowest daily peak of that season. Therefore, using the lowest monthly peak of each season as the native load deduction for Consolidated's competing supplier (*i.e.*, WPSC), the Commission finds that Consolidated passes the market share screen. We stated in the April 14 Order that an applicant has the option of making simplifying assumptions in its analysis where appropriate. We explained that appropriate simplifying assumptions are those assumptions that do not affect the underlying methodology utilized by the screens. April 14 Order, 107 FERC ¶ 61,018, at P 117. Because use of the lowest monthly peak of each season understates the size of the wholesale market, we believe that its use is an appropriate simplifying assumption for purposes of the wholesale market share screen.

Consolidated satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

10. Consolidated states that neither it nor its affiliates are able to erect barriers to entry through the ownership of building sites, interstate natural gas pipelines, engineering or construction firms or natural gas distribution systems. Further, no intervenors have raised concerns regarding barriers to entry. Based on this representation, we find that neither Consolidated nor its affiliates can erect barriers to entry.

Affiliate Abuse

11. Consolidated states that it is not affiliated with any entity engaged in the purchase or sale of electric power for resale. Further, its rate schedule states that Consolidated will make no sales of power to affiliates and that any sale of power for resale made by Consolidated to any affiliate will be made pursuant to a separate filing under section 205 of the Federal Power Act (FPA).⁸ Further, no intervenors have raised concerns regarding affiliate abuse. Based on these representations, we find that Consolidated satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

12. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁹ Electric

⁸ 16 U.S.C. § 824d (2000). Consistent with Commission precedent, sales between a traditional public utility and its affiliates are not permitted without first receiving Commission authorization of the transaction under section 205 of the FPA. *See Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002).

⁹ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁰

13. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.¹¹ Accordingly, the change of status reporting obligation for Consolidated is subject to the outcome of the rulemaking.

14. Consolidated is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Consolidated's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Consolidated's tariff sheets incorporating the market behavior rules are accepted for filing, as discussed in the body of this order.

¹⁰ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹¹ See *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

(C) Consolidated's next updated market power analysis is due within three years of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.